Supreme Court, U.S.
FILED
DEC 17 1990
JOSEPH F. SPANIOL, JR.
CLERK

(2)

No. 90-717

In The

Supreme Court of the United States

October Term, 1990

RAY N. JACKSON,

Petitioner,

v.

GENERAL DYNAMICS CORPORATION,

Respondent.

Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Texas

RESPONDENT'S BRIEF IN OPPOSITION

WILLIAM L. LATHAM
Counsel of Record
A. GARY THOMPSON
McDONALD, SANDERS, GINSBURG, NEWKIRK, GIBSON & WEBB
1300 Continental Plaza
Fort Worth, Texas 76102
(817) 336-8651
(817) 334-0271 (fax)

Counsel for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

Petitioner claims the following issues should be considered by the Supreme Court. It is the Respondent's position that none of them merit review by the Supreme Court.

1.

Whether Petitioner who was found not to be a pauper has a Fourteenth Amendment right to have a statement of facts prepared without paying the cost as required by Texas procedural rules.

2.

Whether Petitioner's Fourteenth Amendment rights were violated because he was not able to prosecute his appeal pro se as well as an attorney.

3.

Whether Petitioner's Fourteenth Amendment rights were violated in the application of an otherwise fair rule of procedure by the appellate courts requiring Petitioner to pay the cost of a statement of facts.

LIST OF PARTIES

1. The Petitioner herein, Ray N. Jackson.
2. The Respondent herein, General Dynamics Corporation.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i
LIST OF PARTIES ii
TABLE OF CONTENTS iii
TABLE OF AUTHORITIES iv
OPINIONS BELOW 1
JURISDICTION 2
STATEMENT OF THE CASE 2
REASONS FOR DENYING THE WRIT 5
CONCLUSION 10

TABLE OF AUTHORITIES

Page

CASES

Boddie v. Connecticut, 401 U.S. 371 (1971) 8

Bordenkircher v. Hayes, 434 U.S. 357 (1978) 8

Ponte v. Real, 471 U.S. 491 (1985) 9

United States v. Goodwin, 457 U.S. 368 (1982) 8

Wolff v. McDonnell, 418 U.S. 539 (1974) 9

RULES

TEX. R. APP. P. 40 6

TEX. R. APP. P. 40(a)(3) 8

TEX. R. APP. P. 40(a)(3)(A) 2

TEX. R. APP. P. 40(a)(3)(C) 8

TEX. R. APP. P. 40(a)(3)(D) 8

TEX. R. APP. P. 46(a) 3, 7

TEX. R. APP. P. 46(e) 4, 9

TEX. R. APP. P. 53(j)(1) 8

TEX. R. APP. P. 53(k) 4, 9

No. 90-717

In The

Supreme Court of the United States

October Term, 1990

RAY N. JACKSON,

Petitioner,

v.

GENERAL DYNAMICS CORPORATION,

Respondent.

Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Texas

RESPONDENT'S BRIEF IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals, Second Appellate District of Texas in Fort Worth, Texas and the denial of Petitioner's Application for Writ of Error by the Supreme Court of Texas are reproduced at Appendix A and C in Petitioner's Petition for Writ of Certiorari.

JURISDICTION

Respondent would urge that the questions presented by Petitioner are not such that merit the judicial discretion of this Court in accordance with Rule 17 of the Rules of the Supreme Court of the United States.

STATEMENT OF CASE

Many facts in Petitioner's Statement are not accurate and, in fact, depict in a false light the actions of both Respondent and the Texas courts.

This is a suit filed by Petitioner seeking to recover a money judgment for what he alleged to be his wrongful termination by Respondent under the Texas workers' compensation laws. Although Petitioner filed suit and has prosecuted part of this appeal *pro se*, during the actual trial of this matter before a jury, he was represented by an attorney of his own choosing. After hearing all the testimony from both parties, the case was submitted to a jury of his peers which found that Petitioner was not wrongfully terminated by Respondent, and a take-nothing judgment was entered.

From that judgment and the jury's findings, Petitioner sought review by the court of appeals in Fort Worth. At the same time, he correctly began the procedure to prosecute the appeal *in forma pauperis* and, thus, be excused from paying the cost of an appeal.[1] A contest

[1] TEX. R. APP. P. 40(a)(3)(A); requires the filing of an affidavit of inability to pay.

to that pauper's affidavit was filed by the Tarrant County District Clerk's office and an evidentiary hearing was held before the trial court.

After the court decided the Petitioner was not entitled to proceed *in forma pauperis*, Petitioner sought review of that decision through mandamus to the court of appeals. A transcript of the proceedings of the *in forma pauperis* hearing was ordered by the appellate court without cost to the Petitioner to be considered in determining the Petitioner's ability to pay costs. After review of the facts, the court of appeals denied Petitioner leave to file his petition for writ of mandamus; thus, affirming the trial court's finding that Petitioner was not a pauper and was able to pay the cost of this appeal.

Petitioner then sought review by the Supreme Court of Texas of this decision by the trial court and the court of appeals on his motion to proceed *in forma pauperis*. Like the court of appeals, the Supreme Court of Texas considered the facts and denied Petitioner leave to file his petition for writ of mandamus.

Throughout this mandamus process, the court of appeals extended the time to file the appeal bond, the transcript and the statement of facts so that Petitioner could avoid payment of costs. After it was determined Petitioner could pay the costs of appeal, Petitioner was able to obtain a cost bond in an amount in excess of that required by Texas law.[2]

---

[2] TEX. R. APP. P. 46(a); this rule requires the appellant to execute a bond in the sum of $1,000. After Petitioner's original

(Continued on following page)

Also contrary to Petitioner's statement, Respondent filed only one response to this multitude of extensions, and that was only after several extensions had already been granted and mandamus of *in forma pauperis* hearing had already been denied by the court of appeals. Despite this response by General Dynamics Corporation, the Fort Worth Court of Appeals granted that motion, as well as numerous subsequent motions to extend without further response.

Petitioner also incorrectly states that the court of appeals ordered the court reporter to prepare and deliver the statement of facts. It was Petitioner who failed to take the necessary steps required by the Texas rules and fulfill his duty to file the statement of facts with the Clerk of the Court of Appeals.[3] Since Petitioner was able to pay for the costs of appeal and, in fact, did get an appeal bond filed, Petitioner was the only one at fault in failing to file a statement of facts in the appellate court almost eleven months after the trial court entered its judgment. Therefore, no one denied Petitioner's right to a statement of facts in this case other than himself.

After all the delays and reviews of Petitioner's *in forma pauperis* proceeding, the only issue actually raised by Petitioner before the court of appeals was whether the trial court erred in failing to clarify a special issue after the jury submitted a question during its deliberation. The

---

(Continued from previous page)

bond was found not properly conditioned and stricken, Petitioner filed another bond for $2,000 to replace the one stricken.

[3] TEX. R. APP. P. 53(k) and 46(e).

court of appeals found the alleged error without merit and affirmed the trial court's judgment.[4]

Thereafter, Petitioner appealed the court of appeals' decision and, for the first time, complained that he was denied equal protection of the law by not allowing him to compel the court reporter to prepare a statement of facts without paying the costs. Petitioner once again urged his only substantive error with regard to the trial court's refusal to give subsequent instructions to the jury while they were deliberating their verdict. After review of the briefs and the record, the Supreme Court of Texas denied Petitioner's application for writ of error.[5] Therefore, the trial court's judgment was again affirmed.

REASONS FOR DENYING THE WRIT

This case presents no novel or important question for this Court's consideration. The ultimate issue presented by Petitioner is whether a person is entitled to demand a statement of facts without cost after it has been determined and reviewed by the Texas courts that he was not a pauper and could afford to pay the costs. This case simply presents no issue of a denial of equal protection or due process guaranteed by the Constitution; rather, there remains only a complaint by Petitioner about the factual findings of the Texas courts with regard to Petitioner's ability to pay the costs of his appeal.

---

[4] See Appendix A to Petitioner's Brief.

[5] See Appendix C to Petitioner's Brief.

Simply stated, Petitioner wants this Honorable Court to review the factual findings of the trial court, court of appeals and Supreme Court of Texas and reconsider the issue of his ability to pay for the cost of appeal, including the statement of facts. The issue of whether Petitioner should have to pay costs on appeal pursuant to Rule 40 of the Texas Rules of Appellate Procedure was heard by the trial court and reviewed via a petition for writ of mandamus by the Fort Worth court of appeals (Cause No. 2-88-176 CV). The Fort Worth court of appeals even ordered and reviewed a statement of facts of the *in forma pauperis* hearing before the trial court at no cost to Petitioner.

After Petitioner was denied leave to file his writ of mandamus in the court of appeals, Petitioner filed another motion for leave to file a petition for writ of mandamus in the Supreme Court of Texas. Once again, Petitioner asked the supreme court to re-review the order denying his request to be considered a pauper and not pay any costs on appeal. The supreme court, after reviewing the motion, also refused to overturn the trial court's determination that Petitioner was able to pay costs. Petitioner has been given equal protection and full due process.

Petitioner has also argued that he was denied the fundamental fairness of due process because of five acts by the court of appeals. However, Petitioner's complaints are unjustified and, in fact, Petitioner completely misstates the true facts surrounding the actions of the court of appeals.

First, Petitioner states that he was required to file "two appeal bonds" of an "exorbitant" amount. Both assertions are unfounded. Petitioner has only had on file one appeal bond at a time since the originally filed bond was not proper and was stricken by the court.[6] Likewise, Petitioner's complaint that he was required to file an "exorbitant bond" is without merit in fact or law. No order of the court of appeals or even a request by Respondent ever required Petitioner to file more than the minimum $1,000 cost bond required by Texas Rules of Appellate Procedure 46(a). After Petitioner's original bond was determined to be not improper, Petitioner filed a properly conditioned bond in the amount of $2,000 on his own and without any motion, request or order of any kind. Although $2,000 is hardly exorbitant, no action by either the court of appeals or Respondent required Petitioner to file a bond in that amount.

As pointed out earlier, it was Petitioner's obligation to pay for the statement of facts and see to its filing. Petitioner's other complaints again rehash the court of appeals' decision that he was not a pauper and argues that the court was somehow being unfair and denying Petitioner due process of the law by requiring him to abide by the rules of court. An evidentiary hearing on Petitioner's ability to pay for the cost was held and reviewed by the Texas courts. Petitioner was given adequate due process through that proceeding, and further

---

[6] See Order striking original bond for failure to comply with TEX. R. APP. P. 46(a) at Appendix A attached to Respondent's Brief.

hearings or delays on the payment of costs for the statement of facts would simply be inappropriate and another unnecessary delay. Petitioner really has no argument that he was treated unfairly since the court had already extended the time for filing the statement for almost eleven months from the date a judgment was rendered in the trial court. Every level of courts in Texas has reviewed these decisions.

It is extremely significant that Petitioner has not questioned the constitutionality of the *in forma pauperis* procedures provided by Texas law.[7] In fact, Petitioner never even cites those rules in his brief. Those proceedings provide for an evidentiary hearing on appellant's ability to pay costs or any part of the costs. TEX. R. APP. P. 40(a)(3)(C) and (D). Furthermore, once it is determined that a party is unable to pay costs, a free statement of facts is provided. TEX, R. APP. P. 53(j)(1). Petitioner is not being punished or deprived of a single right granted by Texas law and, therefore, no due process violation has occurred. In fact, Petitioner exercised every right and privilege under the Texas rules. The facts presented simply did not justify his position.

Petitioner's reliance on *United States v. Goodwin*, 457 U.S. 368 (1982) and *Bordenkircher v. Hayes*, 434 U.S. 357 (1978) is simply unfounded. Petitioner cites broad rules of law that have no bearing on his particular complaint. Quite to the contrary, Petitioner has in no way been denied a meaningful opportunity to be heard. *See Boddie v. Connecticut*, 401 U.S. 371 (1971).

---

[7] TEX. R. APP. P. 40(a)(3).

Furthermore, the actions of the Texas courts were neither unreasonable, arbitrary nor capricious. *Compare Ponte v. Real*, 471 U.S 491 (1985); *Wolff v. McDonnell*, 418 U.S. 539 (1974). Petitioner was given and actually utilized the right to be determined a pauper. Again, Petitioner does not challenge the *in forma pauperis* proceeding utilized in Texas. Petitioner seeks only to question the factual findings of the Texas courts that he was not a pauper and able to pay his costs.

Finally, Petitioner argues that fundamental fairness under Texas law requires a new trial when a statement of facts is not provided.[8] However, even the cases cited by Petitioner require that his inability to obtain a statement of facts be "through no fault of his own."[9] Texas rules clearly provide that Petitioner is responsible for requesting and paying for a statement of facts even if a bond is filed. TEX. R. APP. P. 46(e) and 53(k). There has simply been no showing of any effort by Petitioner to obtain a statement of facts other than simply seeking to avoid paying his costs altogether.

It is also interesting to note that Petitioner did not even request that a statement of facts be prepared until December 5, 1989, some seven months after judgment had been entered in this case. The court of appeals was overly fair with Petitioner in its loose application of rules, and only after numerous extensions and motions did the court of appeals refuse to delay the appeal further in February of 1989. The only one at fault in this matter is Petitioner.

---

[8] See Petitioner's Brief at 12.

[9] *Id.* at 12 and 13.

Simply stated, Jackson has demanded a free ride throughout all these proceedings with minimal or no cost or expense to him, while Respondent has been put to great cost and expense to defend what it considers a meritless and merely harassing case originally filed in 1984. The jury found absolutely no liability on the part of General Dynamics Corporation, and the court of appeals affirmed the trial court, finding no error in the judgment. The Supreme Court of Texas also found no basis to reverse the trial court's decision with regard to either the judgment or the Petitioner's ability to pay costs. Therefore, Petitioner's complaints are without merit, and this Court should refuse Petitioner's petition for writ of certiorari.

CONCLUSION

For the foregoing reasons, the petition for a Writ of Certiorari filed by Petitioner Ray N. Jackson should be denied.

Respectfully submitted,

By: WILLIAM L. LATHAM
Counsel of Record
A. GARY THOMPSON
MCDONALD, SANDERS, GINSBURG, NEWKIRK, GIBSON & WEBB
1300 Continental Plaza
Fort Worth, Texas 76102
(817) 336-8651
(817) 334-0271 (fax)

Counsel for Respondent, General Dynamics Corporation

APPENDIX A

IN THE COURT OF APPEALS

FOR THE SECOND APPELLATE DISTRICT OF TEXAS

Ray N. Jackson	)	
	)	No. 2-88-160-CV
vs.	)	
	)	
General Dynamics Corporation	)	

ORDER

On this day came on to be considered the first motion of appellee, General Dynamics Corporation, to strike the appeal bond.

The motion is GRANTED. A new appeal bond with sufficient conditions in surety is to be filed, pursuant to Rule 49, Tex. R. App. P. by December 29, 1988.

The Clerk of this Court is directed to transmit a copy of this order to the attorneys of record, clerk of the trial court and and court reporter.

SIGNED THIS 9th day of December, 1988.

/s/ David Farris
DAVID FARRIS
JUSTICE

XSFACT.CV